IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION

NO. 4:08-CR-00017-FL-1 NO. 4:12-CV-00034-FL

JAMES LAMONT MARSHALL,)	
Petitioner,)	
v.)	
UNITED STATES OF AMERICA,)	ORDER
Respondent)	

This matter is before the court on the Memorandum and Recommendation ("M&R") of United States Magistrate Judge William A. Webb, regarding petitioner's motion to vacate (DE#42) and respondent's motion to dismiss (DE#47). No objections to the M&R have been filed, and the time within which to make any objection has expired. Also before the court is petitioner's motion to appoint counsel (DE#53). This matter is ripe for ruling.

With respect to the motion to appoint counsel, there is no constitutional right to counsel in § 2255 cases. See Pennsylvania v. Finley, 481 U.S. 551, 554 (1987); Hunt v. Nuth, 57F.3d 1327, 1340 (4th Cir. 1995). However, the district court is authorized under 18 U.S.C. §3006A(a)(2)(B) to appoint counsel to represent a habeas petitioner when the interests of justice so requires and the petitioner is financially unable to obtain representation. The request has been considered and the undersigned finds that this case does not require appointment of counsel. Accordingly, petitioner's motion to appoint counsel is DENIED.

The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for

the reasons stated therein, petitioner's motion is DENIED, defendant's motion is GRANTED, and

this matter is DISMISSED. The clerk of court is directed to close the case.

A § 2255 applicant "cannot take an appeal unless a circuit justice or a circuit or district judge

issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed. R. App. P. 22(b)(1). "A

certificate of appealability may issue . . . only if the applicant has made a substantial showing of the

denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When relief is denied on the merits, an

applicant satisfies this standard by demonstrating that reasonable jurists would find that the district

court's assessment of the constitutional claims is debatable or wrong. Miller-El v. Cockrell, 537

U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676,

683–84 (4th Cir. 2001). When relief is denied on procedural grounds, an applicant satisfies this

standard by demonstrating both that the dispositive procedural ruling is debatable, and that the

motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484–85.

Petitioner has failed to make the requisite substantial showing and, therefore, is not entitled to a

certificate of appealability. Accordingly, a certificate of appealability is DENIED.

SO ORDERED, this the 31st day of December, 2012.

LOUISE W. FLANAGAN

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United States District Judge

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